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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,320	09/18/2003	Barrie R. Froseth	5510US	7919
30173	7590	08/15/2005	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,320

Applicant(s)

FROSETH ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date No page 2 found.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Claim Objections

Claims 5, 8, 34, 37-39, 50 are objected to because of the following informalities: claims 5, 34, 37-39, and 50 all need a period. Claim 8, needs a comma after the word "glycerin", on line 2, not a period. Applicants further checking FOR these informalities would be appreciated. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nayyar et al. (6,403,1349) in view of Giffard et al. (US 2005/0079244 A1) and Rhodes et al (6780,445) and further in view of the applicants' prior art on page 1 (claims 59-61, 63-64).

Nayyar et al. disclose a process as in claim 40 of treating vegetables with an infusion cocktail (abstract). Claim 40 differs from the reference in the moisture content of the vegetables and in the use of inulin with a degree of polymerization from 2-9 as part of the infusion ingredients (col. 8, lines 33-64). However, vegetables generally have the claimed moisture content. Giffard et al. (US 2005/0079244 A1) disclose that it is known to infuse foodstuffs with a prebiotic such as fructooligosaccharide (FOS), raffinose, and inulin (page 3, 0034, 0049, last 5 lines)). Also, Rhodes et al. disclose that

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it is known to infuse a foodstuff such as cheese curd with inulin, a probiotic (abstract and col. 12, 30-44). Nothing is seen that the degree of polymerization is not contained in the above types of inulin. Therefore, it would have been obvious to one of ordinary skill in the art to infuse with inulin as shown by Giffard et al. and Rhodes et al in the process of Nayyar et al. because inulin is a known infusant used for probiotic health functions and use the claimed degree of polymerization.

Claim 41 further requires that the inulin is in a syrup and claim 42 in a particular ratio and claim 43, that inulin is an oligofructose (FOS). Rhodes et al. disclose the use of an about 3-1 ratio, which is within the claimed range (col. 37, lines 12-15, and lines 51- 55. The mixture of inulin and water is considered to be syrup because syrup is a mixture of sugar and water, and inulin is considered to be a sugar (oligosaccharide), which is mixed with water (col. 37, lines 50-55). Also, Nayyar et al disclose mixing ingredients, which includes maltose, a sugar with water as the infusant, which would also make a syrup (col. 10, lines 12-33). Inulin inherently contains FOS. Therefore, it would have been obvious to infuse with an inulin containing syrup in the claimed ratio as shown by Rhodes et al in the process of Nayyar et al. and Giffard et al.

Rhodes et al also disclose mixing the inulin containing syrup as in claim 44 with the food pieces because the infuser mixes all the ingredients or else only one part of the cheese (foodstuff) would have been treated (col. 37, lines 50-68, col. 38, lines 1-10). Therefore, it would have been obvious to mix the syrup with the foodstuff as disclosed by the combined references.

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Claims 45 and 48 further require allowing for osmotic equilibrium. Rhodes et al disclose storing the cheese curd (foodstuff) for 90 days (col. 38, lines 25-33). Nothing is seen as in Nayyar et al. that equilibrium has not been reached (col. 10, lines 20-55). Therefore, it would have been obvious to allow for osmotic equilibrium as shown by the combined references.

The claimed water activity as in claim 46 is disclosed by Nayyar et al. as .62 and 0.71 (col. 12, lines 15-16, lines 53-55). Therefore, it would have been obvious to use known water activities to infuse the food pieces.

Claim 47 further requires treating the mixture for microbial control. Nayyar et al disclose the use of sodium benzoate and potassium sorbate in an infusion mixture containing a sugar (col. 11, line 10-30). Therefore, it would have been obvious to use known antimicrobials in other infusing mixtures containing sugars such as inulin and maltose.

Claim 49 further requires heating the mixture to more than 40 C. Nayyar et al. Disclose heating carrots and the infusion media up to 100 F. Therefore, it would have been obvious to heat treat the mixture as shown by the combined references.

The limitations of claim 50 have been disclosed by Nayyar et al. (col. 12, lines 35-44) except for the use of FOS in a particular concentration in a syrup. However, the combined references disclose that it would have been obvious to use sugars in syrups, and it would have been obvious to substitute inulin (FOS) for the maltose in a syrup as shown by Rhodes and Giffard et al.

Separating the infused fruit material as in claim 51 from the spent inulin syrup is disclosed by Nayyar et al (col. 12, lines 55-60). Therefore, it would have been obvious to separate in the process of the combined references.

Claim 52 requires that a portion of the food material is fruit and claims 53 and 54 particular fruits, claim 55, particular water activities and claim 56, the use of salt, and claim 57 the use of vacuum drying (col. 12, lines 60-54). Vegetables are disclosed by Nayyar et al. (abstract). Certainly, there is no patentable distinction between fruits and vegetables. The reference even uses tomatoes as claimed, which can be considered a fruit or vegetable. Salt is disclosed by Nayyar et al. (col. 12, lines 35-45). Nayyar et al. only requires drying the infused vegetables ((col. 14, lines 19-20). Nothing new is seen in the use of vacuum drying absent unexpected results. Therefore, it would have been obvious to use known water activities, particular fruits, and salt in the process of the combined references.

Claim 58 further requires mixing inulin bearing pieces with a second food and claim 59 requires ready to eat cereal (RTE), and claim 60, particulate form, claim 61 particular water activity, claim 63 the use of flour, claim 64 that the second food is a major component. However, mixing dried fruit with RTE cereal in particulate form is known as disclosed on page 1 of the specification. General most RTE contain some flour and the cereal is the major component. Therefore, it would have been obvious to dry treat as claimed as shown by Applicant's prior art and the combined reference.

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Nothing new is seen in the use of osmotic drying which amounts to air-drying as in claim 62. Therefore, it would have been obvious to use known forms absent a showing of unexpected results using osmotic drying.

The limitations of claims 65-67 have been discussed above and are obvious for those reasons.

Cereal bases which contain inulin are known as disclosed in the specification on page 3 (oo15-0016) as in claims 68 and 69, as is cereal that contains no added inulin, or cereal pieces which are puffed as in "puffed wheat, corn or rice" as in claims 71 and 72. Nothing new is seen in combining the inulin infused fruit and a cereal blend to form a cereal or granola bar as in claim 70 in view of the combined references.

Therefore, it would have been obvious to add or not add inulin to cereal bases, to puff, and combine the inulin bearing fruit and cereal blend to form a cereal or granola bar as disclosed by the combined references.

The limitations of claims 73-76, 78-80 have been disclosed above and are obvious for those reasons. Certainly, cereal is generally free flowing in order to pour it from the box as in claim 77 and nothing new is seen in calcium fortified cereal as in claim 81 as cereal is routinely fortified with vitamins and minerals. Therefore, it would have been obvious to make a free flowing cereal and to fortify with a common mineral such as calcium. The limitations as to the product claims 1-17, 19, 34 have been discussed above and are obvious for those reasons.

The limitations as to the inulin infused fruit being put in various different products as in claims 18, 20-33 is seen as being within the skill of the ordinary worker. Attention

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is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to put the infused fruit product into other products which have already been known to contain fruit for its known function of added more fiber and nutrition to the product.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-3-05


HELEN PRATT
PRIMARY EXAMINER